

IN THE HIGH COURT OF UTTARANCHAL,

AT NAINITAL.

A.O. No. 267/2002

The New India Assurance Company Limited
Through its Divisional Manager,
Opposite Judge Court,
Nainital Road, Haldwani (Nainital) Appellant.

Vs.

- 1- Smt. Veshakee Devi W/o Bahadur Singh
R/o Pandukeshwar, Tehsil Joshimath
District Chamoli.
- 2- Bahadur Singh S/o Ganga Singh
R/o Pandukeshwar P.O. Pandukeshwar,
Tehsil Joshimath
District Chamoli.
- 3- Nagar Panchayat through its
Executive Officer, Tehsil Joshimath
District Chamoli Respondents.

Sri T.A. Khan, learned counsel for the appellant.
Sri R.P. Nautiyal, learned counsel for the respondents.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 173 of the Motor Vehicle Act, has been preferred by the New India Assurance Company Ltd., against the judgment and award dated 3-7-2002, passed by the Motor Accident Claim Tribunal/District Judge, Chamoli in MACP No. 90 of 2000, Veshakee Devi Vs. Nagar Panchayat.

2- The facts of the case, in brief, are that on 31-7-1995 in between 7-8 P.M. the son of the claimant Manoj Sanwal was travelling in the Truck No. U.P. 07-D-2551 as a labourer. The said Truck due to the rash and negligence of its driver met with an accident at Ghorshila near Pandukeshwar. The Truck submerged in the Alaknanda river and the dead body of the deceased could not be recovered. The deceased Manoj was an unmarried young-man and was earning Rs. 2000/- per month from the labour work. The claimants were totally dependent upon the deceased. The claimant filed claim petition for award of Rs. 3,00,000/-.

3- O.P. No.1 Nagar Panchayat filed its WS before the Tribunal alleging therein that the offending truck was insured with New India Assurance Company. The deceased had boarded the truck at his own, hence the Nagar Panchayat is not liable to pay any compensation.

4- The New India Assurance raised the plea that the claim petition was filed after lapse of five years of the accident. It was also alleged that the deceased was not travelling in the offending truck as a labourer.

5- The Tribunal, on the pleadings of parties, framed the following issues:-

- 1- Whether the death of Manoj Kumar Sanwal had occurred on 31.7.1995, near Ghorshila due to the rash and negligence of the driver of Truck No. U.P. 07-D 2521?.
- 2- Whether the Truck No. U.P. 07-D 2551 was owned by O.P.No.1 at the time of accident and it had valid registration and licence?.
- 3- To what amount of compensation, the claimants are entitled to get and from whom?.

6- Parties adduced evidence in support of their cases. The Tribunal after hearing learned counsel for the parties and perusing the material on record, decreed the petition for compensation of Rs. 1,00,000/- to be payable by New India Assurance Company. The claimants were also awarded interest on the above amount @ 6% per annum from the date of filing of the petition till the date of actual payment.

7- Feeling aggrieved, the New India Assurance Company, has preferred this appeal before the Allahabad High Court, which has been transferred to this court, after creation of new State.

8- Heard learned counsel for the parties and perused the record.

9- The learned counsel for the appellant has submitted that the deceased was gratuitous passenger in the truck, therefore, the Insurance Company is not liable to pay any compensation. It was also submitted that the Tribunal has not assessed the evidence adduced before it and committed error in holding the insurance company liable to pay the compensation.

10- I have gone through the impugned judgment and award as well as the material available on record, and I am of the view that the submissions raised by the learned counsel for the appellant, have not force and are liable to be rejected out rightly.

11- The claimant examined herself as P.W.1, and has deposed that her son Manoj used to do the work of loading of sand in the Truck. At the time of accident he was engaged in the offending truck as a labourer. This fact has also been supported by Anuj Sanwal, P.W.2 who has deposed that on the date of the accident, the deceased Manoj had met him at Badrinath Station and he had informed this witness that he was going to Pandukeshwar in the Nager Panchayat Truck so as to bring the sand for Maheshwar Dane. This witness further deposed that the said truck met with accident and submerged in the Alaknanda river. The dead body of the deceased Manoj could not recovered. P.W.3, Baldev Singh is also a witness of fact. This witness has deposed that deceased Manoj had boarded the truck in order to load the sand on the truck. Therefore, from the evidence adduced from the claimants side, it was quite clear that the deceased Manoj was working in the capacity of a labourer in the offending truck at the time of the accident. The opposite parties have not adduced any kind of evidence to controvert the above evidence of the claimants. Therefore, I am of the view that the Tribunal has rightly come to the conclusion that the deceased Manoj was not a gratuitous passenger in the truck as he was travelling in it in the capacity of a labourer.

12- The owner of the offending truck have filed the insurance policy, driving licence, permit, registration etc relating to the Truck before the tribunal. All these documents were valid documents at the time of the accident, hence the insurance company was rightly held liable to pay the compensation.

13- The appeal lacks merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed. The impugned judgment and award is confirmed. No order as to costs.

(B.C. Kandpal, J.)

Dated: 22-12-2006

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